MAGISTRATE'S CRIMINAL APPEAL.

Hwang Yang Choo for the appellant.

Syed Hamzah bin Tahir (Federal Counsel) for the respondent.

Rigby J. : — The appellant in this case was convicted by the learned President, sitting in the Sessions Court, Kota Bharu, of an offence of abducting a woman in order that she might be forced to illicit intercourse, contrary to section 366 of the Penal Code, and sentenced to two years' imprisonment to be followed by one year's Police supervision. He now appeals against both conviction and sentence. There was abundant evidence to justify the conviction.

Police supervision may well be justified in cases where a man is a habitual criminal who commits offence of burglary or housebreaking or theft. This, however, in my view is not the type of case which warrants the imposition of Police supervision. The order for Police supervision is accordingly set aside. The sentence of two years' imprisonment is confirmed.

I may add that it is only with some doubt that I refrain from increasing the sentence.

Order accordingly.

Solicitors : *Pillai, Lim, Lee & Hwang.*

CHONG MOONG SENG v. PUBLIC PROSECUTOR

[Cr. R. J. (Buhagiar J.) May 26, 1956]

[K. L. — Criminal Revision No. 10 of 1956]

Registration and Licensing of Businesses Ordinance, 1953, s. 19(1) — Offences under — Term of imprisonment not mandatory.

In this case the learned Judge considered the effect of the provisions of subsection (1) of section 19 of the Registration and Licensing of Businesses Ordinance, 1953, under which a person who is found guilty of certain offences is "liable to imprisonment . . . and to a fine", and held that under that subsection a sentence of imprisonment is not mandatory.

Re Wong Kup Sing[1] reversed.

Case referred to :—

(1) *Re Wong Kup Sing* (1955) M.L.J. 147.

CRIMINAL REVISION.

Ng Kok Thoy for the appellant.

J. G. Adams (Federal Counsel) for the respondent.

Buhagiar J. : — In this case one Chong Moong Seng, Managing Partner of Thoong Joo Pawn Shop, Kuala Lumpur was charged under section 11(2) of the Registration and Licensing of Business Ordinance, 1953, punishable under section 19 thereof.

At the trial, one Chong Yean Fong, partner in the said business appeared when the defendant's name was called. He pleaded guilty to the charge and was convicted and sentenced to imprisonment for three days and to a fine of $300 or in default one month's imprisonment.

On these circumstances the Deputy Public Prosecutor informed the Court that he could not support the conviction. I therefore exercised the powers of revision and set aside the conviction and sentence.

I may also add here that since giving the grounds of decision in *Re Wong Kup Sing*[1] I have had the opportunity of considering further the effect of the provisions of sub-section (1) of section 19 of the said Ordinance under which a person who is found guilty of certain offences is "liable to imprisonment..... and to a fine". In the present case the Deputy Public Prosecutor submitted that under that sub-section a sentence of imprisonment is not mandatory. I agreed with the submission and hold that under the section a term of imprisonment is not mandatory.

Appeal allowed.

NEELAKANDAN v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) April 6, 1956]

[K. L. — Criminal Appeal No. 9 of 1956]

Penal Code, ss. 361 and 363 — Kidnapping a female minor under 16 years of age from the lawful guardianship of her father — What constitutes the offence.

The facts in this case were shortly as follows:— The female minor concerned was born on April 20, 1940 and at the relevant time she was a student at the Convent, Kuala Lumpur and she was living with her lawful parents. On October 27, 1955 at about 2 p.m. the girl told her mother that she wanted to go to a concert to be held at the Convent, which is about three miles from her house. The mother accompanied her to the bus. The girl did not go to the Convent but went instead to a house of an old lady in Petaling Jaya. The appellant arrived there a short time afterwards and had sexual intercourse with the girl. At about 4.30 p.m. on that day the house was raided by the Police; the appellant and the girl were taken to the police station. The girl was subsequently taken to her parents. Neither the father nor the mother of the girl had given their consent allowing their daughter to be out with the appellant. The evidence showed that the girl had been seeing the appellant before without her parents' consent.

The appellant was convicted of the offence of kidnapping the girl from the lawful guardianship of her father, an offence under s. 363 of the Penal Code and sentenced to 18 months imprisonment. He appealed and the main ground of appeal was that the facts as disclosed did not amount to an offence of kidnapping.

Held: (1) the offence is committed if the taking away takes place without the consent of the lawful guardian, the consent of the minor is immaterial; (2) it is not necessary for the commission of the offence that the accused should make use of force or fraud, a mere leading of a not unwilling child is sufficient to constitute taking or enticing; (3) it is quite clear in the present